

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

RICHARD D. AUSTIN,

v.

Plaintiff,

SONYA CARILLO, *et al.*,

Case No. 3:19-cv-00274-MMD-WGC

ORDER

Defendants.

This action began with a *pro se* civil rights complaint filed pursuant to 42 U.S.C. § 1983 by state prisoner Richard D. Austin. On March 17, 2020, the Court issued a screening order dismissing the complaint with leave to amend and directed Plaintiff to file an amended complaint within thirty days. (ECF No. 5.) Plaintiff filed an amended complaint, and the Court issued a second screening order on June 2, 2020. (ECF No. 10.) The Court's second screening order dismissed Plaintiff's first amended complaint with leave to amend and directed Plaintiff to file a second amended complaint within thirty days. (*Id.*) The thirty-day period has now expired, and Plaintiff has not filed a second amended complaint or otherwise responded to the Court's second screening order.

District courts have the inherent power to control their dockets and "[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal" of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (affirming dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (affirming dismissal for failure to comply with an order requiring amendment of complaint);

1 *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to
2 comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone*
3 v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987) (affirming dismissal for failure
4 to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986)
5 (affirming dismissal for lack of prosecution and failure to comply with local rules).

6 In determining whether to dismiss an action for lack of prosecution, failure to obey
7 a court order, or failure to comply with local rules, the court must consider several factors:
8 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to
9 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
10 disposition of cases on their merits; and (5) the availability of less drastic alternatives.
11 See *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at
12 130; *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

13 Here, the Court finds that the first two factors, the public's interest in expeditiously
14 resolving this litigation and the Court's interest in managing the docket, weigh in favor of
15 dismissal. The third factor, risk of prejudice to Defendants, also weighs in favor of
16 dismissal, since a presumption of injury arises from the occurrence of unreasonable delay
17 in filing a pleading ordered by the court or prosecuting an action. See *Anderson v. Air*
18 *West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—public policy favoring
19 disposition of cases on their merits—is greatly outweighed by the factors in favor of
20 dismissal discussed herein. Finally, a court's warning to a party that his failure to obey
21 the court's order will result in dismissal satisfies the “consideration of alternatives”
22 requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779 F.2d
23 at 1424. The Court's order requiring Plaintiff to file a second amended complaint within
24 thirty days expressly stated: “It is further ordered that if Plaintiff chooses not to file a
25 second amended complaint curing the deficiencies of [the first amended complaint], this
26 action will be dismissed with prejudice for failure to state a claim.” (ECF No. 10 at 8.)
27 Thus, Plaintiff had adequate warning that dismissal would result from his noncompliance
28 with the Court's order to file an amended complaint within thirty days.

It is therefore ordered that this action is dismissed with prejudice based on Plaintiff's failure to file an amended complaint in compliance with this Court's June 2, 2020, order (ECF No. 10).

It is further ordered that the motion to proceed *in forma pauperis* (ECF No. 4) is denied as moot.

It is further ordered that the Clerk of Court enter judgment accordingly.

DATED THIS 6th day of August 2020.

MIRANDA M. DU
CHIEF UNITED STATES DISTRICT JUDGE